

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ELEANOR SMITH, )  
# 217730 )  
 )  
Petitioner, )  
 )  
v. ) Civil Action No. 2:09cv425-WHA  
 ) (WO)  
CYNTHIA S. WHEELER-WHITE, *et al.*, )  
 )  
 )  
Respondents. )

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This case is before the court on a *pro se* 28 U.S.C. § 2254 petition for habeas corpus relief filed by Eleanor Smith (“Smith”), a state inmate incarcerated at ADOC Work Relief in Birmingham, Alabama.<sup>1</sup> In her petition, Smith challenges a prison sentence for first-degree theft of property imposed on her in 2001 by the Circuit Court for Jefferson County, Alabama, a state trial court. Smith asks the trial court to award her credit against her sentence for time spent in pretrial confinement and time spent out on bond and on parole.

**DISCUSSION**

This court “in the exercise of its discretion and in furtherance of justice” may transfer an application for writ of habeas corpus to “the district court for the district within which the State court was held which convicted” the petitioner. 28 U.S.C. § 2241(d). Smith attacks a sentence imposed upon her by the Circuit Court for Jefferson County, Alabama, and

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<sup>1</sup>The court notes that Smith did not submit the \$5.00 filing fee with her petition or file a motion for leave to proceed *in forma pauperis*.

requests that the trial court award her credit against her sentence for time spent in pretrial confinement and time spent out on bond and on parole. Jefferson County is located within the jurisdiction of the United States District Court for the Northern District of Alabama. In light of the foregoing, this court concludes that transfer of this case to the Northern District for review and disposition is appropriate.

### **CONCLUSION**

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Northern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that on or before **June 12, 2009**, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir.

1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 29<sup>th</sup> day of May, 2009.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
CHIEF UNITED STATES MAGISTRATE JUDGE